IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Civil Writ Petition No. 546 of 2001 (S/S)
(Old No. 32994 of 2000)

Natthu Lal Gangwar
S/o Sri Indal Lal
Functioning as Assistant Teacher
(L.T. Grade) at A.N. Jha Government
Inter College, Rudrapur,
District Udham Singh Nagar.
R/o 183 / 46, Awas Vikas Colony,
Rudrapur, District Udham Singh Nagar.

…….. Petitioner

Versus

1. Director of Secondary Education
   U.P. Lucknow.
2. Additional Director of Education
   (UTTARA KHAND) U.P., Lucknow.
3. Regional Joint Director of Education,
   Nainital.
4. District Inspector of Schools
   Udham Singh Nagar.
5. Principal A.N. Jha Govt. Inter College,
   Rudrapur, District Udham Singh Nagar.

…… Respondents

Mr. V.P. Nautiyal and Mr. K.N. Joshi, Advocates, for the petitioner.
Mr. N.P. Sah, learned Brief Holder for the State.

Hon'ble Prafulla C. Pant, J.

Heard learned counsel for the parties.

2) By means of this writ petition, moved under Article 226 of the Constitution of India, the petitioner has challenged the order dated 05.07.2000 (copy Annexure 21 to the writ petition), passed by the Joint Director of Education, Kumaon Region, Nainital, whereby the

petitioner's representation for arrears of salary has been rejected.

3) It appears that the petitioner, an Assistant Teacher, was transferred from Government Inter College Srikhet, District Almora to Government Inter College Rudrapur, District Udham Singh Nagar in the year 1997. It is alleged that due to the interim order from Allahabad High Court in a writ petition filed by the petitioner's predecessor at Rudrapur, the petitioner was not permitted to discharge his functions at Government Inter College Rudrapur. The petitioner appears to have filed a Writ Petition No. 13483 of 2000, before the Allahabad High Court, which was decided on 27.03.2000, wherein it was directed that the representation dated 12.10.1999, be disposed of by the respondent concerned. In compliance of said order, the impugned order appears to have been passed, rejecting the same. While, rejecting the representation made by the petitioner for arrears of salary, the Joint Director of Education has observed that, since, the petitioner did not took over his charge in Government Inter College Srikhet, District Almora, from where he was transferred after the interim order was obtained by one Sri Tiwari (Petitioner's predecessor in Govt. Inter College Rudrapur) the petitioner stood remained absented from his duty without leave for the period in question, for which the arrears of salary has been claimed by him.

4) Learned counsel for the petitioner, relying on Fundamental Rule 9(6) B of Financial Hand Book, Part II, argued that the petitioner should have been treated on duty

for the period for which he was made to wait necessarily, particularly, when he was not responsible for not taking charge. In the present case, the petitioner was not asked to wait to take charge at the Government Inter College Rudrapur, in view of the Court's order and he should have joined his duties back at Srikhet, as he was directed, and also due to the stay of operation of the said transfer order.

5) In the circumstances, there appears no illegality in the impugned order. The writ petition is, therefore, disposed of with the direction that if the petitioner makes any application for leave, ordinary or extraordinary, or if he seeks extension of joining time for the disputed period in question, the authorities concerned shall pass appropriate order thereon keeping in view the unusual circumstances in which petitioner could not work. (All pending applications in this Petition also stand disposed of).

(Prafulla C. Pant, J.)

Dt.: November 29, 2006
H.Negi